

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT
OF ALABAMA, SOUTHERN DIVISION**

KELLEY FOODS OF ALABAMA, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	1:04 - cv-01246-MHT-DRB
)	
MYERS NISSI & COMPANY, INC.; a)	
corporation d/b/a VERTICALSOFT,)	
)	
Defendant.)	

JOINT MOTION TO CONTINUE MEDIATION

COME NOW Plaintiff Kelley Foods of Alabama, Inc. ("Kelley Foods") and Defendant Myers Nissi & Company, Inc. ("Myers Nissi"), and submit this joint motion to continue the mediation in this matter. As grounds therefor, the parties would show unto the Court as follows:

1. Trial in this matter had been set for September 11th, 2006 in Dothan, Alabama, and mediation is currently set for Thursday, September 7, 2006 at 1 p.m. The trial date has been continued until February 2007 due to the unexpected illness of plaintiff's attorney, Mark Vaughan.
2. Attorney Mark Vaughan, who is Kelley Foods' long-time counsel, has represented Kelley Foods since the outset of this case, and is an integral part of Kelley Foods' trial team, suffered a heart attack yesterday, September 4, 2006. The undersigned understand that Mr. Vaughan is presently hospitalized for a cardiac procedure. He is not expected to recover in time to assist Kelley Foods at the mediation of this matter.
3. Because of Mr. Vaughan's intimate knowledge of Kelley Foods in general, and his

involvement in this case in particular, Kelley Foods would be severely hindered in its ability to successfully mediate this matter were it required to go forward without Mr. Vaughan. Kelley Foods is, therefore, in need of additional time in order to allow Mr. Vaughan to recover or to bring other counsel up to speed to take his place at the mediation.

4. A continuance of the mediation may also have the additional benefit of allowing the parties additional time to continue their on-going settlement negotiations.
5. Defendant Myers Nissi agrees that Mr. Vaughan's presence at the mediation is desirable and, therefore, jointly requests with plaintiff that the mediation be continued.
6. The parties agree that re-setting the mediation in October 2006 should allow Mr. Vaughan sufficient time for recovery or, alternatively, will allow sufficient time for the parties to determine whether the mediation will have to proceed in his absence. Accordingly, the parties jointly request that the mediation of this matter be reset to a mutually available date in October 2006. In connection with making this motion and request, the parties wish to advise the Court that the attorneys for both sides currently have available the dates of October 23, 24, 26, 30 and 31, as well as November 1 and 2; and the parties would, therefore, request that the court reset the mediation in this matter for one of these dates if acceptable to the Court.

WHEREFORE, premises considered, Kelley Foods of Alabama, Inc. And Myers Nissi & Company, Inc. respectfully request that the Court enter an Order continuing the mediation

of this case to a mutually available date in October 2006 to be set by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

s/John M. Herke
JOHN M. HERKE